



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Computer Technology Services, Inc.

File: B-271435

Date: June 20, 1996

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Ronald K. Henry, Esq., and Mark A. Riordan, Esq., Kaye, Scholer, Fierman, Hays & Handler, for North American Telecommunications, Inc., an intervenor.
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DIGEST

Award to technically slightly lower-rated, lower-priced offeror is unobjectionable where (1) although solicitation stated that technical superiority was more important than price, the solicitation did not provide for award solely on the basis of the highest technical point score, and clearly stated that price would be considered a substantial factor in the evaluation; and (2) the source selection evaluation panel (SSEP) considered the relative strengths and weaknesses in the protester's and the awardee's proposal and, despite a specific request from the source selection authority to do so, the SSEP could not identify any strengths in the protester's proposal sufficient to justify paying its higher price.

DECISION

Computer Technology Services, Inc. (CTSI) protests the award of a contract to North American Telecommunications, Inc. (NATI) under request for proposals (RFP) No. DASW01-95-R-0267, issued by the Department of the Army, Defense Supply Service--Washington (DSSW), for material handling, moving, and storage services, and warehouse operations support. CTSI contends that the agency improperly awarded the contract to an offeror with a technical proposal that was lower rated than CTSI's.

We deny the protest.

BACKGROUND

The RFP, issued on June 30, 1995, contemplated the award of a fixed-price requirements contract for a base period with up to four 1-year options.¹ Section M of the RFP explained that the government would evaluate proposals by assigning numerical ratings to each proposal in accordance with the following five factors worth a total of 1,000 points (total number of points available for each factor is shown in parenthesis): (1) technical approach (350 points); (2) understanding the project (225 points); (3) personnel experience and qualifications (125 points); (4) innovation (100 points); and (5) corporate past performance record on projects of similar size and scope (200 points). Within each factor, the RFP listed subfactors and the maximum point value for each. The RFP stated that technical superiority would be most important in the evaluation. Although price would not be point-scored, the RFP stated that price would be considered a substantial factor in the evaluation. Award was to be made to the responsible offeror whose proposal was most advantageous to the government considering price and technical factors.

Four offerors submitted proposals by the time set on August 21 for receipt of initial proposals. A source selection evaluation panel (SSEP) rated the initial technical proposals by assigning numerical scores under each evaluation factor and subfactor in accordance with section M of the RFP. The contracting officer, who served as the source selection authority (SSA) for this procurement, reviewed the results of the SSEP's initial evaluation and concluded that the evaluators had provided insufficient information concerning the strengths and weaknesses of the competing proposals to permit an intelligent selection decision. The SSA requested that the SSEP reconvene, clarify the evaluation results, and provide explanatory details in support of the numerical ratings assigned the proposals.

In response to that request, the SSEP reconvened and reevaluated all four proposals, and on September 22, submitted more detailed evaluations to the SSA, with the following point-score results:

¹The agency competed the requirement under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), which authorizes the Small Business Administration to contract with agencies and arrange performance of such contracts by awarding subcontracts to socially and economically disadvantaged small businesses.

Offeror	Tech. Score
CTSI	963
NATI	894
C	544
D	456

For each factor and subfactor rated, the SSEP identified strengths, weaknesses, and deficiencies in the proposals, and provided a narrative explanation in support of the numerical ratings assigned each proposal. The SSEP also identified any areas requiring discussions with the offerors. Subsequently, on September 29, the SSEP submitted a "consolidated technical evaluation report summary" to the SSA. In that document, the SSEP provided a brief narrative reflecting a summary of the consensus findings of the SSEP addressing each of the four proposals.

As relevant to this protest, the SSEP noted in its summary report that CTSI had submitted an excellent proposal which had earned nearly a perfect score in the evaluation. The SSEP pointed out that the evaluators had identified more than 40 strengths in CTSI's proposal, and had found only 4 weaknesses and no deficiencies. The SSEP found that CTSI's proposal "far exceed[ed] the other offerors in the depth of understanding, demonstrated experience, and overall responsiveness . . . ," and recommended CTSI for award.

The SSEP's summary report noted that the evaluators had identified 27 strengths and 9 weaknesses in NATI's proposal. The report explained that NATI had not submitted all of the information requested in the RFP, and that these gaps in NATI's proposal had been specifically identified in the evaluation documents submitted to the SSA as "weaknesses" or "areas requiring discussions." The summary report concluded that NATI was "an acceptable contractor," and was the SSEP's second choice for award of the contract. The SSEP concluded that offerors C and D had submitted poor proposals and recommended that those two firms be eliminated from further consideration.

Based on these results, the agency excluded offeror C's and D's proposals from further consideration. The agency then conducted discussions with CTSI and NATI, and requested best and final offers (BAFO) from those two firms. The SSEP reevaluated proposals based on the BAFOs and the responses to the discussion questions, and unanimously concluded that both CTSI and NATI had adequately addressed all of the SSEP's concerns.

After reviewing the results of the SSEP's final evaluation, by letter dated February 26, 1996, the SSA requested that the SSEP make an award recommendation. In his letter, the SSA pointed out that NATI's lower-rated proposal was \$3.5 million lower in total price than the protester's proposal. The SSA reminded the SSEP that under the terms of the RFP, award was to be made to the offeror whose proposal was considered most advantageous to the government, considering price and technical factors. The SSA then requested that the SSEP specifically identify advantages and disadvantages in the competing proposals that would justify paying a premium for CTSI's higher-rated proposal.

In response to the SSA's request, the SSEP was unable to identify any specific advantages in CTSI's proposal that would justify paying the higher price. The SSEP stated that the slight point difference between the protester's and the awardee's proposals—a difference of only 69 out of 1,000 points—was insignificant given the technical merit of both proposals. The SSEP specifically stated that both CTSI and NATI had "made excellent presentations and that either firm could adequately meet the needs of DSSW." The SSEP concluded that the 69-point difference in technical scores was not sufficient to justify paying \$3.5 million more for CTSI's proposal. Having failed to identify any strengths or advantages in the protester's proposal worth paying the premium, the SSEP unanimously recommended award to NATI. In a memorandum dated February 29, the SSA documented his reasons for concurring with the SSEP's recommendation. By letter dated March 6, the agency informed CTSI that award had been made to NATI. This protest followed.

PROTESTER'S CONTENTIONS

CTSI challenges the selection decision on several grounds. Central to the protester's contentions is the argument that the SSEP improperly reversed its position with respect to the technical superiority of CTSI's proposal. The protester relies on the SSEP's September 29 "consolidated technical evaluation report summary," which described the strengths and benefits of CTSI's proposal over NATI's and recommended award to the protester. According to the protester, the SSEP's change in position, in response to the SSA's request that the SSEP make an award recommendation in light of the price difference between CTSI and NATI, was unreasonable. The protester maintains that given the solicitation's emphasis on technical considerations over price, and in light of the SSEP's initial recommendation to award the contract to CTSI, the selection of NATI's lower-rated proposal was improper.²

²The protester also contends that the SSA improperly revealed pricing information to the SSEP during the evaluation and that the SSEP failed to properly evaluate CTSI's responses to the discussion items. Except for the protester's bare assertions in this regard, there is no support in the record for these allegations.

DISCUSSION

As a preliminary matter, CTSI's allegation that selection of NATI's lower-rated proposal was improper because the solicitation emphasized technical considerations over price is without merit. Even where price is the least important evaluation criterion, an agency may properly award to a lower-rated, lower-priced offeror if the agency reasonably determines that the premium involved in awarding to a higher-rated, higher-priced offeror is not justified. Tracor Applied Sciences, Inc., B-253732, Oct. 19, 1993, 93-2 CPD ¶ 238. As explained below, the record shows that the SSA reasonably concluded that paying a premium for CTSI's higher-rated technical proposal was not warranted in light of NATI's meritorious proposal and lower price.

To the extent that CTSI argues that the SSEP "reversed" its conclusions regarding the technical superiority of CTSI's proposal over NATI's, the record does not support its position. Rather, in response to the SSA's specific request, the SSEP concluded that based on its review of the proposals and the responses to the discussion items, there was no basis to justify award to CTSI at its higher price, particularly in light of the technical merits of NATI's lower-price proposal. The SSEP then unanimously recommended award to NATI.

Specifically, the record shows that the SSEP initially identified nine "weaknesses" in the awardee's proposal, which NATI fully addressed following discussions, thus narrowing the gap that may have existed between the proposals.³ For instance, some of the concerns noted, which the agency characterizes as relatively minor, included that NATI had not referred to the use of pagers or cellular telephones in its proposal; that an employee NATI proposed had limited records management experience; and that although NATI made references to clerical support, it had not listed any support staff. The record shows that these weaknesses, along with the other six the SSEP identified in NATI's proposal, were fully addressed in response to the agency's discussion items. With respect to the use of communications equipment, for example, NATI directed the agency to the relevant page of its proposal where it stated that its "leader" personnel would be immediately available to the contracting officer's representative by telephone or pager. NATI also provided a list of its support staff and replaced the records management employee with someone with more experience in performing that function. Since NATI's responses to the discussion items fully addressed all of the SSEP's concerns, the differences due to the weaknesses that the SSEP had noted between CTSI's and NATI's initial proposals either no longer existed or were significantly reduced as a result of discussions.

³As noted above, the SSEP identified four "weaknesses" in CTSI's proposal, all of which were satisfactorily addressed during discussions. Thus, after discussions, both offerors had resolved all the weaknesses initially identified in their proposals.

In addition, the record shows that the SSA concluded that CTSI's numerical scoring advantage over NATI was based primarily on the firm's experience as the incumbent and the evaluators' familiarity with CTSI, as evidenced by the narrative comments in the SSEP's worksheets. The record supports this conclusion. For instance, one evaluator noted as a strength in CTSI's proposal the fact that firm "is currently working a DSS-W contract performing tasks 2, 3, 4, and 5," and awarded the firm the maximum number of points (200) under the corporate past performance record factor. The evaluators also noted as a strength in CTSI's proposal the fact that the firm is the incumbent with "direct experience" and "knowledge" in the DSS-W environment, and gave CTSI's proposal the maximum number of points available under the applicable evaluation factor.

In a statement provided to our Office, the SSA explains that based on his review of the SSEP's comments, it was clear to him that CTSI's incumbency served to provide the SSEP with a level of assurance that raised the evaluators' "comfort level," resulting in higher numerical ratings assigned CTSI's proposal under several evaluation factors; the SSA concluded, however, that the mere fact that CTSI was a "known entity" to the evaluators should not serve as a discriminating factor between the two firms. Source selection officials in appropriate circumstances properly may conclude that a numerical scoring advantage based primarily on incumbency does not indicate an actual technical superiority that would warrant paying a higher price, Sparta, Inc., B-228216, Jan. 15, 1988, 88-1 CPD ¶ 37; see also Northern Virginia Serv. Corp., B-258036.2; B-258036.3, Jan. 23, 1995, 95-1 CPD ¶ 36, n. 5 (citing NUS Corp.; The Austin Co., B-221863; B-221863.2, June 20, 1986, 86-1 CPD ¶ 574), and we see nothing unreasonable about the SSA's conclusion here. Accordingly, we think that the SSA's conclusion that CTSI's numerical rating advantage did not reflect an actual technical superiority that would warrant paying its higher price also was a reasonable exercise of the SSA's discretion.

The protester further argues, however, that the SSA's price/technical tradeoff decision was flawed because the SSA, rather than conducting an analysis to determine whether NATI's lower-rated proposal represented the best value to the government, simply improperly concluded that CTSI's and NATI's proposals were essentially technically equal, and selected NATI for award solely on the basis of its lower price.

The protester's contention is without merit. Selection officials must decide whether the point scores show technical superiority and what that difference may mean in terms of contract performance. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976) 76-1 CPD ¶ 325. As already explained, the SSEP was unable to attribute any meaningful significance in terms of contract performance to the slight point difference between CTSI's and NATI's proposals, and the SSA reasonably concluded that CTSI's numerical point advantage was based primarily on the firm's incumbency and the SSEP's familiarity with a "known entity." Further, the SSA's

request to the SSEP to identify specific strengths in CTSI's proposal that would justify paying the higher price was a reasonable attempt to ensure that proposals were evaluated in accordance with the evaluation factors announced in the solicitation, and that any cost/technical tradeoff decision was reasonably based. See, e.g., Wyle Labs., Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107; Latecoere Int'l, Inc.--Advisory Opinion, B-239113.3, Jan. 15, 1992, 92-1 CPD ¶ 70. Thus, regardless of whether the SSA viewed the proposals as essentially technically equal, making price the basis for selection, or concluded that the point difference between the proposals did not warrant paying the price premium associated with CTSI's proposal, we find nothing improper in the SSA's selection decision. See Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136, recon. denied, B-255268.2, July 5, 1994, 94-2 CPD ¶ 6.

The protest is denied.

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